



PIPELINE INFORMATIONAL MEETING PRESENTATION

In accordance with Iowa Code section 479B.4, the following is a summary of the hazardous liquid pipeline permit process before the Iowa Utilities Board (Utilities Board or Board) and of the legal rights of affected landowners.

Iowa Code Chapter 479B is the law governing the construction of hazardous liquid pipelines in Iowa. A copy of Chapter 479B is attached. A link to the laws or rules referenced during this presentation can be found on the Board web page at <http://iub.iowa.gov>.

THE PERMIT PROCESS

1. Any hazardous liquid pipeline¹ proposed for construction in Iowa must obtain a permit from the Utilities Board. A company seeking to build a pipeline can also request that the Utilities Board grant the right of eminent domain (condemnation) to obtain the right-of-way needed for the project. The Board would determine the extent to which the right of eminent domain would be granted.
2. For a pipeline like the one being discussed today,² Iowa law requires that an informational meeting must be held in each affected county before the company can request a permit from the Board. The company proposing the pipeline is required to notify all persons with an ownership interest in possibly affected property of the meeting.
3. The law³ requires that a representative of the Utilities Board present a summary of the legal rights of landowners at this meeting, after which a representative of the company will explain the proposed project. The company cannot begin right-of-way negotiations with landowners until after this meeting and cannot petition the Board for a permit until at least 30 days after this meeting.
4. This informational meeting is not a hearing upon which the Board will base a decision. At this time there is no petition before the Board. The purpose of this meeting is to provide you with information relative to the proposed project, not to receive evidence or debate its merits. No formal record of this meeting is made. This is not the meeting for presenting evidence in favor of or opposing this project.

¹ Iowa Code § 479B.2; “hazardous liquid” means crude oil, refined petroleum products, liquefied petroleum gases, anhydrous ammonia, liquid fertilizers, liquefied carbon dioxide, alcohols, and coal slurries.

² Iowa Code § 479B.4; pipelines that will be five miles long or longer and operate at a pressure of more than 150 pounds per square inch must hold informational meetings.

³ Iowa Code § 479B.4.

5. A public hearing will be held to receive that evidence, as required by law.⁴ After the petitions are filed and review is completed, a notice will be published for two consecutive weeks in a newspaper of general circulation in each county through which the pipeline would extend, identifying the time, date, and place of the hearing. This hearing will be the opportunity for interested parties to present their evidence in favor of or opposing the project. The Board's decision will be based on the record created at that hearing.⁵

6. In this case, because the proposed pipeline is over five miles long, the law requires that the hearing will be held in the county seat of the county located at the midpoint of the proposed line.⁶

7. In this case, the Board is not an advocate for any person, landowner, or party. The Board acts as a neutral decision maker to determine whether a proposed pipeline promotes the public convenience and necessity and meets other requirements of Iowa law. The Board cannot serve as a legal advisor to any party. If you believe you have need for a lawyer, you may retain one at your own expense.

8. Board proceedings are conducted pursuant to Iowa Code Chapters 479B and 17A and 199 Iowa Administrative Code Chapter 13. The decision whether to grant a permit and, if requested, the right of eminent domain, will be made by the Board. The Board may appoint an administrative law judge to preside over the hearing and issue a proposed decision. That proposed decision will become the final decision of the Board unless it is appealed to the Board.

9. When the Board has decided the case, either initially or on appeal from a proposed decision, any party to the proceeding may file for rehearing within 20 days. Once a final decision has been made, any party may appeal to District Court within 30 days .

10. All case documents, including the company's filings, Iowa Utility Board orders, objections and appeals will be posted to the Board's Electronic Filing System (EFS) at <https://efs.iowa.gov/efs/>.

OBJECTIONS

1. Any person whose rights or interests may be affected has the right to file a written objection to the proposed project with the Utilities Board.⁷

2. Written objections may be filed at any time but not later than five days prior to the hearing. The Board may, but is not required to, allow late filed objections, in which case the company must be given reasonable time to respond. Comments made today will not be part of the official case record.

3. A suggested form of objection is attached to this document and is available electronically on the Board's website. The form, which is not required, is provided for your convenience and to show the type of information an objection should include.

⁴ Iowa Code § 479B.6.

⁵ Iowa Code § 479B.6.

⁶ Iowa Code § 479B.6.

⁷ Iowa Code § 479B.7.

4. The Utilities Board strongly prefers that objections be filed using the Electronic Filing System at <https://efs.iowa.gov/efs/>. However, written objections sent by mail will be accepted.

5. At formal hearings, parties will be given reasonable opportunity to cross-examine witnesses and to present witnesses on their own behalf. The burden is on the company to prove the necessary elements of its petition.

6. Board proceedings are quasi-judicial in nature. Hearings are comparable to courtroom proceedings, with testimony, cross-examination, and presentation of other evidence. The person presiding over the hearing will assist participants unfamiliar with the process, but cannot assist any party with presentation of their case.

RIGHT-OF-WAY

1. To locate a pipeline on private property, the company must obtain the necessary rights from the landowner or owners. The legal document providing such rights is called an easement. An easement may be a voluntary easement, which is one the landowner agrees to sign after negotiations with the company; or it may be obtained through the use of eminent domain.

2. Generally speaking, an easement is an acquired privilege of the company for the use of a property. The landowner retains ownership, but use of the easement area is restricted by conditions set forth in the easement or by law. The rights sought by the company will be similar whether obtained by voluntary easement or by eminent domain.

3. The Board does not supervise or control negotiations for the purchase of voluntary right-of-way easements. Once this informational meeting is completed, negotiations are strictly between you and the company either with or without your use of private counsel.

4. Landowners should carefully read the form of easement provided by the company and be thoroughly aware of the rights the company seeks. The landowner has the right to negotiate with the company over the terms of the easement.

5. If future installation of drain tile or soil conservation practices and structures on a property is contemplated, this information needs to be provided to the company, in writing, prior to signing an easement. If plans defined by a qualified technician showing this intended work are provided to the pipeline company in advance, Board rules require that the pipeline be installed in a manner that avoids interference with those plans.⁸

6. If you decide to sign a voluntary easement, you have for a limited time the right to cancel the agreement. Cancellation must be by certified mail with return receipt requested, mailed to the company's principal place of business.⁹ The company must receive the cancellation within seven days, excluding Saturday and Sunday, of the date the agreement was signed.

⁸ 199 Iowa Admin. Code 9.4(7).

⁹ Iowa Code § 479B.24.

The company must inform you in writing of your right to cancel and provide you with a form for the notice of cancellation. The right of cancellation may be exercised only once.

7. If you have not allowed company surveyors on your property up to this time, after this informational meeting the company has the right to enter upon land for making land surveys to determine the direction or depth of pipelines. If permission has not been obtained voluntarily, the company must give the landowner ten days written notice by restricted certified mail of its intent, after which it may enter the land. The entry for authorized surveys is not trespass and may be aided by injunction. The company must pay for any damages incurred by the entry and survey.¹⁰

8. If pipeline right-of-way is wholly abandoned for pipeline purposes by relocation of the pipeline, is not used or operated for five consecutive years, or if construction is begun but ceases and is not resumed for five years, the right-of-way may revert to the current landowner.¹¹ The statute sets out the process for landowners to follow to initiate the reversion process.

EMINENT DOMAIN (CONDEMNATION)

1. If the company cannot obtain the rights it seeks by voluntary easement, it may petition the Board for authority to take those rights by eminent domain, or condemnation. Condemnation is the process of taking private property for public use through the right of eminent domain.

2. Under state law, private property cannot be taken for a pipeline unless a) The pipeline is needed to serve a public use and b) Just compensation is paid. The Board determines whether the company has shown the pipeline will serve the public convenience and necessity. The Board does not determine the matter of just compensation for property rights taken by eminent domain. That issue is determined by a Compensation Commission appointed from your county under Iowa Code Chapter 6B.

3. At this time the company does not have the right of eminent domain; that is, it does not have the power to condemn. The right of eminent domain may only be granted by the Board after a public hearing.

DAMAGES

1. In addition to payment for easement rights, the company is required by law to pay for actual property damage caused by constructing and maintaining the pipeline. Payment for damages, including those incurred before, during, or after construction, is different than and separate from the payment for the easement. However, the easement may include provisions covering the determination and payment of damages.¹²

¹⁰ Iowa Code § 479B.15.

¹¹ Iowa Code § 479B.32.

¹² Iowa Code §§ 479B.17 and 479B.29.

2. In this context, "damages" means compensation for adverse physical impacts to the land, crops, livestock, and other personal property. The law is mainly oriented towards damages to agricultural lands, and provides a list of primarily agricultural damages that are specifically eligible for compensation. However, those are not the only damages that may be claimed. Any type of physical damage to agricultural, or urban, property is subject to compensation.

3. The damage settlement may include an allowance for a temporary reduction in crop yield in the disturbed area. If in future years the owner believes the settlement made for future crop deficiency was inadequate, the statute allows renegotiation.¹³ The landowner must notify the company in writing fourteen days before harvest each year to assess crop deficiency.

4. In the context of damages, the word "owner" may refer to the tenant of the land if the tenant is the owner of the crops, livestock, or other property affected.

5. The company must provide you with a written statement explaining how damages resulting from pipeline construction will be determined and paid.¹⁴ You have the right to negotiate with the company for more specific or additional terms.

6. The pipeline company must designate a point of contact for landowner inquiries or claims, including a name, address, and toll-free phone number.¹⁵ This information must be provided in writing prior to construction to all landowners with property that will be disturbed by the construction. When construction is completed, a point of contact shall remain available for at least one year for all landowners and for individual landowners until their claims are settled.

7. Damage settlements are not decided by the Board but are subject to negotiation between the owner and the company.

8. The easement or other written agreement between the landowner and company may provide that the damage amount be determined by an arbitrator.¹⁶

9. If the parties cannot agree on a settlement and no other means of resolving disputes has been agreed to, the landowner or tenant may petition the county board of supervisors to have the damages determined by a Compensation Commission.¹⁷ The petition must be filed not less than 90 days after completion of installation of the pipeline.

If the award of the property damage Compensation Commission is more than 110% of the company's final offer for damages, the company must pay for the cost of the assessment by the Commissioners, plus reasonable attorney fees and costs incurred by the owner as

¹³ Iowa Code § 479B.29.

¹⁴ Iowa Code § 479B.27.

¹⁵ 199 Iowa Admin. Code 9.5.

¹⁶ Iowa Code § 479B.25.

¹⁷ Iowa Code Chapter 6B and Iowa Code § 479B.30.

determined by the Commissioners. If the award is 110% or less of the company's final offer, the owner must pay the fees and costs incurred by the pipeline company.¹⁸

10. If you find additional damage after you have already been paid for any construction or maintenance damages caused by the pipeline company, and the additional damage was not apparent when the first damages were paid, you have five years from the date of payment to renegotiate the damages.¹⁹ The pipeline company is required to give you written notice of this right at the time of settlement of damages.

11. Iowa law gives the company the right of reasonable access to its pipelines for purposes of constructing, operating, maintaining, and locating its lines. The company must pay the owner of the land and crops for all damages resulting from any such entry and action. The law allows the parties to enter into a separate agreement to cover such situations.²⁰

12. Iowa law requires that you call the Iowa One Call system at 811 (or 1-800-292-8989) before any excavating is done.²¹ Excavation does not include normal farm operations (tillage up to 15 inches deep) or gardening but it does include tiling and construction of erosion control structures. The call must be made at least 48 hours before excavation begins, not including weekends and legal holidays. The owners of any underground utilities in the area, including the proposed pipeline if it is approved and constructed, will mark the location within 48 hours (or notify you that the company's facilities are not in the area where you will be excavating). There is no charge for the call or for marking the lines. Failure to call will expose you to possible hazards and potential liability.

13. If new tile is installed after the pipeline is constructed and additional costs are incurred due to the presence of a pipeline, the company must pay those additional costs provided the county engineer or soil and water conservation district conservationist verifies that the pipeline is the specific cause; or, you can negotiate an agreement with the pipeline company on the project design and the share of the cost to be paid. Either way, you are encouraged to discuss your plans with the pipeline company well in advance of tile installation.²²

AGRICULTURAL LAND RESTORATION/COUNTY INSPECTORS

1. The Board has adopted rules establishing standards for the restoration of agricultural lands during and after pipeline construction. These rules are found in 199 Iowa Administrative Code Chapter 9. A copy of Chapter 9 is attached. During construction, these regulations will be enforced by inspectors hired by the county, not by the Board.²³

¹⁸ Iowa Code § 479B.30(6).

¹⁹ Iowa Code § 6B.52.

²⁰ Iowa Code § 479B.26.

²¹ Iowa Code chapter 480.

²² Iowa Code § 479B.31.

²³ Iowa Code § 479B.20.

2. When a petition for a pipeline permit is filed, it must include a land restoration plan showing how the requirements of the land restoration laws and rules will be met. The Board will consider this plan as part of the permit proceeding. The company must provide affected landowners with a copy of this plan prior to starting construction.
3. Landowners have the right to negotiate independent land restoration agreements with provisions different from those of the Board rules or the land restoration plan, provided they are not inconsistent with the rules. Such agreements may be part of the easement or separate. They must be in writing and a copy must be provided to the county inspector.
4. The company must allow landowners and county inspectors to view the proposed center line of the pipeline before commencing trenching operations to ensure that construction takes place in its proper location.
5. The county inspector may temporarily halt construction if the construction is not in compliance with the land restoration rules, the land restoration plan, or an independent agreement on land restoration or line location, until the inspector consults with the supervisory personnel of the pipeline company. If any special provisions in those areas were made during the easement negotiations, you should make sure the county inspector is aware of them before construction begins on your land.

Attached to this presentation is a summary of events entitled Appendix A. This will not be read, but is provided to give you an overview of the process in the sequence that it may occur.

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APPENDIX A

NOTE: A typical sequence of events, as it may affect the landowner, is set forth below. You should not attach any rigid significance to this sequence. It is merely an example to aid you in understanding the process.

1. Company planning determines need for the line between termini.
2. Prime route, and possibly alternative routes, are tentatively selected.
3. Route landowner and tenant names and addresses collected.
4. Informational meeting notices mailed and notice is published in a newspaper of general circulation in each county.
5. Informational meeting.
6. Company right-of-way personnel contact landowners to solicit voluntary easements.
7. Company may enter land for land survey to determine depth and direction of pipeline.
8. The company files petition for permit with Utilities Board.
9. Newspaper publishes notices of petition and hearing.
10. Public hearing by Utilities Board.
11. Utilities Board decision denying or granting permit. If the petition requested eminent domain, a ruling granting , denying, or modifying that right will also be issued.
12. If the petition and/or eminent domain is denied, the company may petition for rehearing or appeal the Utilities Board denial to the courts. If the petition and/or eminent domain is granted, the landowner may petition for rehearing or appeal the Utilities Board decision to the courts.

To simplify the balance of this list, it is assumed that the Utilities Board granted the permit and the right of eminent domain, and the decision was not appealed.

13. The pipeline company shows the landowner exactly where the pipeline will be placed.

14. The company may commence construction where it has obtained voluntary easements.
15. If eminent domain actions are to be taken, the company petitions the chief judge of the judicial district for the county involved to appoint a Compensation Commission. (Iowa Code Chapter 6B).
16. The Compensation Commission sets compensation amounts, the company pays landowners who will accept; posts payment with the sheriff for those who won't, and may commence construction over the balance of the route.
17. Either the landowners or the company may appeal the amount determined by the Compensation Commission to the courts.
18. Line construction and clean-up completed.
19. Company pays agreed-to construction damages to property owners and gives written notice (Iowa Code Section 6B.52) of renegotiation right.
20. If the landowner or tenant and company cannot agree on the amount of construction damages, and there is no provision in the easement or other agreement calling for such disputes to be settled by an arbitrator or other means, the landowner or tenant may petition the county board of supervisors to establish a Compensation Commission to determine the damages.
21. Either the landowners or the company may appeal the amount determined by the Compensation Commission to the courts.